

STATE OF NEW YORK
COUNTY OF CAYUGA : COUNTY COURT

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THE PEOPLE OF THE STATE OF NEW YORK, : IND # 2016-095

-vs- : NYSID # 05333521P

DONNESIA BROWN, DOB: 08-18-1968, :

Defendant. : CJTN # 67762007N

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Sentence

October 11, 2016

Cayuga County Courthouse
Auburn, New York 13021

B E F O R E:

HONORABLE MARK H. FANDRICH,

Acting County Court Judge

A P P E A R A N C E S:

For the People: JON E. BUDELMANN, ESQ.
District Attorney for Cayuga County
95 Genesee Street
Auburn, New York 13021

For the Defendant: ROMOLO CANZANO, ESQ.
2 South Street
Suite 202
Auburn, New York 13021

DONNESIA BROWN, Defendant

DEBORAH S. INDELICATO, RPR, RMR - OFFICIAL COURT REPORTER

1 THE COURT: This is the matter of People versus
2 Donnesia Brown. Mr. Brown is here with Attorney Rome
3 Canzano. District Attorney Jon Budelmann is here on
4 behalf of the People. This matter is on for sentencing
5 today. My notes indicate that Mr. Brown needs to address
6 the second felony offender statement which I think the
7 People have just filed with the Court. Thank you.

8 MR. CANZANO: Thank you, your Honor. One
9 outstanding issue remains prior to sentencing, that is
10 Mr. Brown admitting to being a second felony offender.
11 We have been provided with a copy of the second felony
12 offender statement, I will go over it right now with Mr.
13 Brown.

14 THE COURT: You tell me when you are ready to
15 proceed. Do you want me to call another case?

16 MR. CANZANO: Judge, no, we are ready. We are
17 prepared to admit.

18 THE COURT: Okay. Thank you. All right. Mr.
19 Brown, good morning once again. The District Attorney
20 has filed a statement specifying that by a judgment
21 entered on September 28th, 2011 upon your plea of guilty
22 that you were convicted of the crime of -- felony of
23 robbery, second degree, class C felony down in supreme
24 court, for New York County and you were sentenced to five
25 years determinate and five years post-release supervision

1 with respect to that conviction.

2 And that you were also previously convicted on
3 July 3rd, 2007 upon your plea of guilty to criminal sale
4 of controlled substance in the third degree which is a
5 class B felony in Bronx County Supreme Court. You were
6 sentenced to an indeterminate sentence of state
7 incarceration of two to four years.

8 That you were also previously convicted upon
9 July 30th, 2007, upon your plea of guilty to attempted
10 robbery first degree, class C felony. And that's in
11 Bronx County Supreme Court. And you received a
12 determinate term of five years in prison.

13 That you were also convicted on October 28th,
14 1999 upon your plea of guilty to criminal controlled --
15 criminal sale of controlled substance in the fifth
16 degree, class D felony, Bronx County where you received
17 an indeterminate sentence of 30 months to five years.

18 That you were also previously convicted of on
19 November 23rd, 1993 upon your plea of guilty to criminal
20 possession of a weapon in the third degree as a class D
21 felony. That was in supreme court for New York County
22 and you were sentenced to two years -- an indeterminate
23 term of imprisonment of two to four years.

24 And finally that you were convicted on April
25 12, 1988 upon your plea of guilty of attempted robbery

1 second degree, a class D felony in New York County
2 Supreme Court and was sentenced thereon to a definite
3 term of one year.

4 Mr. Brown, have you received a copy of this
5 statement, sir?

6 THE DEFENDANT: Yes. Yes, sir.

7 THE COURT: Thank you. Have you had sufficient
8 time to review this statement with your lawyer?

9 THE DEFENDANT: Yes, sir. Yes, sir.

10 THE COURT: All right. Under the law, you may
11 admit you are the person named in that statement who was
12 convicted of those felonies or you may deny that
13 allegation or any allegations set forth in that statement
14 or you may controvert the statement on the grounds that
15 the previous convictions were unconstitutionally
16 obtained. Do you understand that, Mr. Brown?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: All right. Mr. Brown, do you wish
19 to deny any allegations in the statement or controvert
20 the statement?

21 THE DEFENDANT: No, sir.

22 THE COURT: Do you admit you are the person
23 named in that statement who was convicted of --

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Hold on. I have to go through --

1 THE DEFENDANT: I'm sorry. I'm sorry.

2 THE COURT: No, that's fine. Convicted on
3 September 28th, 2011 of the felony of robbery, second
4 degree?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: You were also the person named in
7 that statement who was convicted of criminal (sic)
8 controlled substance in the third degree on July 30th,
9 2007?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And you were also the person named
12 in that statement who was convicted on July 30th, 2007 to
13 the felony of attempted robbery in the first degree?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And you were also the person named
16 in that statement who was convicted of the felony of
17 criminal (sic) controlled substance in the fifth degree
18 on October 28th, 1999?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: You were also the person named in
21 that statement who was convicted of on November 23rd,
22 1993, to the felony of criminal possession of a weapon in
23 the third degree?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: And finally, you were the person

1 named in that statement who was convicted of the felony
2 of attempted robbery second degree on April 12, 1988?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: All right. Based upon the
5 defendant's admissions and the sufficiency of the
6 uncontroverted allegations in the statement, I find that
7 the defendant, Donessia Brown, has been subject to five
8 predicate felony convictions. Is that a sufficient
9 finding for the People?

10 MR. BUDELMAN: It is, Judge, that's fine.

11 THE COURT: All right. Is that sufficient for
12 the defense?

13 MR. CANZANO: Yes.

14 THE COURT: All right. Thank you. Okay. Let
15 me ask Mr. Canzano, have you had sufficient time to
16 review the pre-sentence report?

17 MR. CANZANO: Yes.

18 THE COURT: All right. Thank you.

19 MR. BUDELMANN: Thank you, Judge. Judge, the
20 defendant did appear before the Court on August 2nd. At
21 that time after a break, he did plead guilty to promoting
22 prison contraband in the first degree, class D felony.
23 We had a negotiated agreed upon offer of two to four
24 years in this matter. And the matter was adjourned until
25 today for sentencing.

1 I would move sentencing in this matter. As you
2 have heard, the defendant has an extensive criminal
3 history. By my count from the PSI, there were four
4 felony convictions in New York County and three in Bronx
5 County as well as a youthful offender felony. So, I --
6 we knew of his extensive history before. This is, in
7 fact, the standard offer for weapons in our prison. So,
8 we would ask the Court -- I see no reason to deviate --
9 to impose the agreed upon two to four years. Thank you.

10 THE COURT: Thank you, Mr. Budelmann. Mr.
11 Canzano, when you are ready.

12 MR. CANZANO: Thank you. I will be similarly
13 short, your Honor. Mr. Brown accepted responsibility.
14 He's been cooperative with the system. His prior
15 sentence has expired. He has been sentenced to our local
16 facility. I'm not aware of any issues there.

17 Judge, we raise essentially two additional
18 issues and for clarification for Mr. Brown's sake, as I
19 have explained to him, any sentence that he's sentenced
20 to by law is consecutive to his current sentence.
21 However, given the fact his sentence has expired, he's
22 receiving credit for this, for the time since that
23 sentence has expired.

24 THE COURT: Since, right. That's correct.

25 MR. CANZANO: Your Honor, two additional

1 issues. One, Mr. Brown is asking that you defer the
2 surcharges associated with this given his cooperation
3 with this case. And finally, Judge, to the extent that
4 you have authority to do so, he would request that he not
5 be given haircuts while in the facility, state facility.
6 Thank you. I would ask you impose the agreed-upon
7 sentence.

8 THE COURT: Okay. Thank you. Do you wish to
9 comment on any of these requests of the defendant?

10 MR. BUDELMANN: No, Judge. I think I know
11 where you are going. I don't know if Mr. Brown has any.
12 Right. Thank you.

13 THE COURT: Mr. Brown, the law provides you an
14 opportunity to make a statement. Do you wish to make any
15 statement at this time?

16 THE DEFENDANT: No, sir.

17 THE COURT: All right. From the sentence which
18 I'm about to pronounce, you have the right to appeal by
19 filing a notice of appeal within 30 days. If financially
20 you are unable to secure the services of an attorney to
21 prepare a notice of appeal and perfect an appeal, you
22 have the right to have an attorney assigned for that
23 purpose at no cost to you. Do you understand that, Mr.
24 Brown?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: All right. I have reviewed the
2 pre-sentence report. There is nothing in the
3 pre-sentence report which would cause me to deviate from
4 the understanding we reached at the time of your plea.
5 It is the judgment of this Court with respect to your
6 conviction that you receive an indeterminate sentence of
7 imprisonment which will have a maximum term of four
8 years, I'll hereby impose a minimum period of
9 imprisonment of two years. That again will be
10 consecutive to any time that you may owe to DOCCS. That
11 you be committed to the custody of the New York State
12 Department of Corrections and Community Services there to
13 be dealt with in accordance with the law pertaining to
14 your sentence.

15 Now, with respect to your request. First, I
16 must order that you provide a DNA sample if you have not
17 already done so and pay the \$50 DNA testing fee. With
18 respect to deferral of surcharge, I'm not going to grant
19 that. I'm going to order that the surcharge be paid. It
20 is -- you can ask Mr. Canzano. I do not defer the
21 surcharge. And with respect to ordering that you not
22 have haircuts, I'm not going to do that either only
23 because I have had -- I have had cases in the past where
24 inmates -- not saying you would do this -- but have tried
25 to weave contraband in their hair.

1 THE DEFENDANT: What?

2 THE COURT: So it is a security issue. I'm not
3 going to order that. So, with that said, anything else,
4 Mr. Budelmann?

5 MR. BUDELMANN: Nothing further for the People.

6 MR. CANZANO: Judge, I need to go over the
7 appeal form.

8 THE DEFENDANT: Can I say something? Defendant
9 would like to speak, please.

10 THE COURT: First, go over your right to appeal
11 with your attorney.

12 MR. BUDELMANN: Now that he's gone over the
13 right to appeal, only other issue, credit for time
14 served, jail does track the time. They work with
15 corrections. He will get credit for any time he spent.
16 If he owed multiple, he would get double credit.

17 THE COURT: Go ahead.

18 THE DEFENDANT: Sir, I just paid the surcharge
19 and DNA. I am asking if you cannot let me pay this
20 surcharge. You are giving me more time. I'm asking if
21 you cannot -- like I mean I don't have the money, keep
22 paying these surcharges. Surcharges -- they got my DNA.
23 They have the surcharge. I paid already.

24 THE COURT: I'm not going to do that. Thank
25 you.

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(End of proceeding.)

(Certified to be a true and accurate transcript.)

Deborah S. Indelicato

DEBORAH S. INDELICATO, RPR, RMR
Official Court Reporter